PI claims are hitting brokers in the recession, so it’s vital to be properly shielded from the elements, advises Alan Eyre

It will not be a big surprise to brokers who have lived through more than one recession to learn that claims are on the increase. The combined impact of cash-strapped businesses, increased redundancies and stagnant economic activity will always encourage people to scrutinise their insurance policies and turn to lawyers for remedies and windfalls.

Reflecting this, 2009 has seen a significant increase in the number and size of PI claims against brokers themselves. These arise both from clients who find themselves faced with an uninsured or partly uninsured loss, and also in defending clients’ interests in a claim against insurers. And there are several areas where alarm bells should be ringing.

Under-insurance is one of the major sources of claims. In a recession most clients will put pressure on brokers to help them reduce premium costs and they are, perhaps, not so inclined to listen carefully to the risk warnings as they might be in more prosperous times. The result can lead to confusion over the technicalities of the cover.

For example, we have seen a number of cases recently concerning under-insurance in commercial property and business interruption cover resulting from an alleged failure by the broker to explain – or put in writing an explanation of – the “average clause” in the policy wording.

Case law demonstrates that the nature of averaging is a matter which an insurance broker must make clear to his client so that the client is not unintentionally under-insured or intentionally under-insuring but without appreciating the true consequences of doing so.

Unless the broker can demonstrate that the technical element was fully illustrated in a way in which the customer could be expected to understand, the case is likely to go against the professional adviser.

It is, of course, difficult to prove a verbal exchange took place so the solution here is a clear audit trail. After every client renewal meeting or policy amendment, the broker must send a letter detailing all the points discussed. Better still these meetings could be formally minuted to create the necessary chain of documentation. Putting it in writing also gives the broker a second chance to reflect on any shortcomings in the advice given and speak to the client again.

A further error of omission that can blow up in brokers’ faces is the failure to notify the PI insurers of a potential claim. This occurs most frequently in cases where an insurer has repudiated a claim and the broker opts to fight the case on behalf of his client.

A recent example illustrates this well: the insurer rejected a claim because a burglar alarm warranty was breached but, since it was a fire loss, the client supported by his broker argued that the alarm issue was not material. It is at this point that the broker should have informed the PI insurer.

Three months later, the insurance company was still standing firm on the claim, but the broker’s insurance policy had moved on...to another provider. Additionally, the presence of an unreported potential claim on renewal could well be a breach of the PI contract and leave the broker hopelessly exposed in fighting the case.

The increase in claims against brokers will, of course, ultimately lead to a hardening of PI rates sometime in the future. In the interim, insurers are likely to increase excesses and look carefully at policy wordings.

Meanwhile, the messages to brokers are unequivocal: advise your clients clearly of the risks, put it in writing, and make sure you are as well covered as all your clients.

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